

**UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
GORDON GREEN,)	Bankruptcy No. 21 B 06189
)	
Debtor.)	Honorable Jacqueline P. Cox
)	

NOTICE OF HEARING

TO: See attached list

PLEASE TAKE NOTICE that on **Tuesday, November 2, 2021, at 1:00 p.m.**, I will appear before the Honorable Jacqueline P. Cox, or any judge sitting in that judge's place, and present the **Trustee's Objection to Debtor's Claimed Exemptions**, a copy of which is attached.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, (1) use this link: <https://www.zoomgov.com/>. (2) Enter the meeting ID 1612732896. (3) Enter the passcode 778135.

To appear by telephone, (1) call Zoom for Government at 1-669-254-5252 or 1-646- 828-7666. (2) Enter the meeting ID 1612732896. (3) Enter passcode 778135.

When prompted identify yourself by stating your full name.

To reach Judge Cox's web page go to www.ilnb.uscourts.gov and click on the tab for Judges.

If you object to this motion and want it called on the presentment date above, you may file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may call the matter regardless.

Date: October 15, 2021

**DAVID P. LEIBOWITZ, not individually, but as
the Chapter 7 Trustee of the Debtor's Estate**

By: /s/ David P. Leibowitz

David P. Leibowitz (ARDC # 1612271)
Law Offices of David P. Leibowitz, LLC
3438 N. Elaine Place, Suite 4
Chicago, IL 60657
(312) 662-5750
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CERTIFICATE OF SERVICE

I, Linda A. Green, certify that I served a copy of this notice and the attached **Trustee's Objection to Debtor's Claimed Exemptions** on each entity shown on the attached list at the address shown and by the method indicated on the list on October 15, 2021, at 4:00 p.m.

/s/ Linda A. Green

Attorney

SERVICE LIST

Parties served via electronic notice through CM/ECF:

Patrick S Layng USTPRegion11.ES.ECF@usdoj.gov

Ben L Schneider ben@windycitylawgroup.com,
mstone@windycitylawgroup.com;ebrandes@windycitylawgroup.com

Parties served via first class U.S. mail:

Gordon Green, 2151 Sherman Ave., Evanston, IL 60201

**UNITED STATES BANKRUPTCY COURT FOR THE
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OBJECTION TO DEBTOR’S CLAIMED EXEMPTIONS

NOW COMES David P. Leibowitz (“Trustee”), not individually but as the chapter 7 trustee of the bankruptcy estate of Gordon Green (“Debtor”), and hereby submits this objection to Debtor’s claimed exemptions.¹ In support of this objection, the Trustee states the following:

JURISDICTION

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334 and venue is proper pursuant to 28 U.S.C. § 1408.
2. Pursuant to Local Rule 40.3.1 of the United States District Court for the Northern District of Illinois, the District Court has referred all bankruptcy cases to the Bankruptcy Court for initial determination, as permitted by 28 U.S.C. § 157(a).
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

FACTUAL AND PROCEDURAL BACKGROUND

4. Debtor filed a voluntary chapter 7 petition on May 11, 2021.

¹ All chapter, section, and rule references, unless otherwise noted, are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (“Bankruptcy Code”), and the Federal Rules of Bankruptcy Procedure, Rules 1001-9037 (“Bankruptcy Rules”).

5. David P. Leibowitz is the duly appointed, qualified, and acting chapter 7 trustee in this case.

6. Debtor's Schedule B of personal property schedules an interest in a "Retirement Fund," described as "Sun Life: Life Income Fund," which Debtor values at \$73,200 (the "Sun Life Fund"). A copy of the statement for the Sun Life Fund, covering the period from January 1, 2020 through December 31, 2020, is attached hereto as Exhibit A.

7. Debtor's Schedule C claims this asset to be exempt pursuant to 735 ILCS 5/12-1006.

8. However, the Sun Life Fund, if it is a pension plan at all, is a pension plan organized under the laws of Ontario or Canada.

9. Under 735 ILCS 5/12-1006, a debtor's interest in or right to distributions under a retirement plan is exempt only if the plan:

"(i) is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended, or (ii) is a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended."

10. By reason of the foregoing, the Debtor's interest in the Sun Life Fund is not and cannot be exempt under Illinois law.

11. Moreover, the statement provided by the Debtor reflects that \$78,233.87 was withdrawn from the Sun Life Fund during 2020. The Debtor's schedules and statement of affairs fail to account for the dissipation or disposition of those funds.

REQUESTED RELIEF

12. The Trustee requests that the Court enter an order (a) disallowing the exemption claimed by Debtor in the Sun Life Fund in the amount of \$73,200 pursuant to 735 ILCS 5/12-1006, (b) requiring the Debtor to turn over such funds to the Trustee forthwith, and (c) requiring the Debtor to file an amended Statement of Financial Affairs detailing the disposition of the \$78,233.87 withdrawn from the Sun Life Fund during the year prior to the Debtor's chapter 7 case.

BASIS FOR REQUESTED RELIEF

13. Bankruptcy Rule 4003 allows a party in interest such as the Trustee to object to the debtor's exemptions within 30 days after the § 341 meeting is concluded or within 30 days after any amendment or supplemental schedules are filed, whichever is later, and the court may extend the time for filing objections upon timely motion of a party in interest.

14. On August 9, 2021, the Trustee filed a motion to extend the time to object to Debtor's exemptions, and on August 17, 2021, this Court entered an order extending the time for the Trustee to object to the Debtor's exemptions to and including October 15, 2021. This objection is, accordingly, timely filed.

15. The Debtor's claimed exemption in the Sun Life Fund is invalid, inasmuch as the pension plan in question was organized under the laws of Ontario, Canada and therefore was not the type of plan that could be exempt under the express terms of the Illinois statute.

NOTICE

16. Notice of this Motion was provided to the Debtor, his counsel, the Office of the United States Trustee, and all parties that have requested or receive notice through CM/ECF. The

Trustee requests that this Court find the notice provided for herein sufficient under the circumstances and waive and dispense with any further notice requirements.

WHEREFORE, the Trustee requests that the Court enter an order:

- (a) Disallowing the exemption claimed by Debtor in the Sun Life Fund in the amount of \$73,200 pursuant to 735 ILCS 5/12-1006;
- (b) Requiring the Debtor to turn over all such funds to the Trustee forthwith;
- (b) Requiring the Debtor to file an amended Statement of Financial Affairs detailing the disposition of the \$78,233.87 withdrawn from the Sun Life Fund during the year prior to the Debtor's chapter 7 case; and
- (c) Granting such further relief that the Court deems just and proper.

/s/ David P. Leibowitz
Not individually but as the Chapter 7 Trustee of the
Debtor's Estate

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